

COMMISSION IMPLEMENTING DECISION (EU) 2023/438**of 24 February 2023****granting a derogation requested by certain Member States pursuant to Regulation (EU) No 952/2013 of the European Parliament and of the Council to use means other than electronic data-processing techniques for the exchange and storage of information for Release 2 of the Import Control System 2***(notified under document C(2023) 1174)***(Only the Croatian, Danish, Dutch, Estonian, French, German, Greek, Polish, Romanian and Swedish texts are authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ⁽¹⁾, and in particular Article 6(4) in conjunction with Article 8(2) thereof,

After consulting the Customs Code Committee,

Whereas:

- (1) Article 6(1) of Regulation (EU) No 952/2013 requires that all exchanges of information between customs authorities and between economic operators and customs authorities, and the storage of such information, as required under the customs legislation, be made using electronic data-processing techniques. For this purpose and in accordance with Article 6(2) of Regulation (EU) No 952/2013, the Commission draws up common data requirements.
- (2) Article 6(4) of Regulation (EU) No 952/2013 provides for the possibility for the Commission to adopt decisions in exceptional cases to allow one or several Member States to derogate from using electronic data processing techniques for the exchange and storage of information, if such derogation is justified by the specific situation of the requesting Member State and is granted for a specific period of time.
- (3) Commission Implementing Decision (EU) 2019/2151 ⁽²⁾ establishes the work programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code ('the work programme'). The work programme lists the electronic systems to be developed and the dates on which those systems are expected to become operational. Amongst others, that programme specifies the implementation and deployment window for the Import Control System 2 ('ICS2') in accordance with Articles 6(1), Articles 16, 46, 47 and 127 to 132 of Regulation (EU) No 952/2013.
- (4) Furthermore, Article 278(3)(b) of Regulation (EU) No 952/2013 specifies the deadline until which means other than electronic data-processing techniques may be used on a transitional basis to implement the provisions concerning entry summary declarations and risk analysis in relation to the entry of goods into the customs territory of the Union.
- (5) In accordance with the work programme, Member States are to be ready from 1 March 2023 to deploy the national entry system as a national component of the ICS2 Release 2 in order to exchange and store entry summary declarations collected from economic operators for goods transported by air and they are to grant economic operators the possibility to connect to the system within the deployment window lasting until 2 October 2023 and, as of the date of their connection, to lodge entry summary declarations by using that system.

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

⁽²⁾ Commission Implementing Decision (EU) 2019/2151 of 13 December 2019 establishing the work programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code (OJ L 325, 16.12.2019, p. 168).

- (6) However, three major and partially unforeseen developments have arisen, all having a significant impact on, and posing complementary challenges to, the resources of Member States: the COVID-19 pandemic caused substantial delays in IT developments in Austria, France, Greece and the Netherlands. The withdrawal of the United Kingdom from the European Union and the resulting surge in the number of customs declarations required France and the Netherlands to reshuffle resources and priorities. The financial consequences of the Russian invasion of Ukraine on the customs activities of the neighbouring or geographically close countries, further aggravated the situation and demanded additional resources in Austria. In particular, procurement and tendering difficulties, as well as budgetary and staffing issues, stemming from the aforementioned circumstances had a significant impact on Member States' abilities to meet the deadlines, as cited by Austria, Belgium, Croatia, Denmark, Estonia, France, Greece, Luxembourg, Poland, Romania and Sweden.
- (7) These specific circumstances have caused significant delays in the ongoing IT developments and prevented certain Member States from completing the deployment of IT means for the national entry system component of the ICS2 Release 2 system by 1 March 2023. Therefore, on 16 May 2022 Estonia, on 19 May 2022 the Netherlands, on 25 May 2022 Romania, on 3 June 2022 Greece, on 7 June 2022 France, on 23 September 2022 Denmark, on 28 October 2022 Austria, on 15 December 2022 Sweden, on 19 December 2022 Belgium, on 22 December 2022 Luxembourg, on 23 December 2022 Croatia and on 23 January 2023 Poland requested to use means for the exchange and storage of information other than electronic data-processing techniques in accordance with Article 6(4), second subparagraph, of Regulation (EU) No 952/2013.
- (8) In compliance with Article 6(4), third subparagraph, of the above regulation, such derogations should not affect the exchange of information between the Member State to which it is addressed and other Member States nor the exchange and storage of information in other Member States for the purposes of the application of the customs legislation. Austria, Belgium, Croatia, Denmark, Estonia, France, Greece, Luxembourg, the Netherlands, Poland, Romania and Sweden are to notify the Commission about the progress made in the deployment of the national entry system of ICS2 Release 2 in relation to goods transported by air as part of the progress reporting process laid down in Article 278a of Regulation (EU) No 952/2013. The communication and sharing of national planning information as outlined in Article 4 of Implementing Decision (EU) 2019/2151 is to be ensured.
- (9) Due to the significance of the ICS2 system in establishing an integrated EU approach to reinforce customs risk management and in ensuring pre-arrival security and safety, whilst facilitating the free flow of legitimate trade, and due to the nature and complexity of the ICS2 system, the changes necessary for the alignment to the Union Customs Code requirements have repercussions also on other related or dependant IT systems. The duration of the derogation should thus be kept to a strict minimum. In that light and having regard to the impacts of the exceptional circumstances that have caused delays in the ongoing IT developments of ICS 2 Release 2 in Member States and the current state of those developments, the derogation should last until no later than 30 June 2023,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States may use means for the exchange and storage of information other than electronic data-processing techniques under the common component of release 2 of the electronic system provided for in Article 182 of Regulation (EU) 2015/2447 ⁽³⁾ ('ICS2') until 30 June 2023, provided that the use of means other than electronic data-processing techniques does not affect the exchange of information between the Member State and other Member States or the exchange and storage of information in other Member States for the purpose of the application of the customs legislation.

⁽³⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

2. For the purpose of complying with the condition provided for in paragraph 1 Member States shall use the electronic system referred to in Article 36(1) and (2) of Regulation (EU) 2015/2447 ("CRMS") in order to exchange information as follows:

- (a) the customs authorities of the Member States to which the particulars of the entry summary declaration were communicated through ICS2, as referred to in Article 186(2) point (a) of Regulation (EU) 2015/2447 shall communicate the results of their risk analysis to the customs office of first entry in the Member State to whom a derogation laid down in paragraph 1 is granted;
- (b) the customs office of first entry, referred to in Article 186(7) first subparagraph of Regulation (EU) 2015/2447, shall communicate the recommendation to control the goods to a customs office, referred to in Article 186(7) second subparagraph of Regulation (EU) 2015/2447, of a Member State to whom the derogation laid down in paragraph 1 is granted;
- (c) the customs office, referred to in Article 186(7) second subparagraph of Regulation (EU) 2015/2447, of a Member State to whom a derogation laid down in paragraph 1 is granted, shall communicate the decision on the control of the goods referred to in point (b) to all the customs offices potentially concerned by the movement of goods;
- (d) the customs office of a Member State to whom a derogation laid down in paragraph 1 is granted shall communicate the results of the control carried out by it to other customs authorities of the Member States, in accordance with Article 186(7a) of Regulation (EU) 2015/2447.

Article 2

This decision shall apply from 1 March 2023 until 30 June 2023.

Article 3

This Decision is addressed to the Kingdom of Belgium, the Kingdom of Denmark, the Republic of Estonia, the Hellenic Republic, the French Republic, the Republic of Croatia, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, Romania and the Kingdom of Sweden.

Done at Brussels, 24 February 2023.

For the Commission
Paolo GENTILONI
Member of the Commission
